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Book Reviews

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BOOK REVIEWS

CORPORATE ADVANTAGES WITHOUT INCORPORATION. By Edward H. Warren. New York: Baker, Voorhis & Co. 1929, pp. x, 1012.

Professor Warren's *Corporate Advantages without Incorporation* should appeal especially to teachers of the law of partnership, joint-stock companies, business trusts, and corporations. It deals with certain controversial matters which are of greater interest to legal scholars than to practicing lawyers. The greater part of his discussion turns on the question of when, if ever, a group should be treated as a legal entity or as an aggregate body by the courts. The author is very positive in his hostility to the legal entity theory of partnerships. He has collected the cases both for and against the entity theory and analyzes them with great care. He has collected the statutes in various states which bear upon suits in ordinary partnerships and considers the cases in which they have been construed by the courts. His work on these statutes and cases under them is especially valuable to law teachers.

The author points out that while the Uniform Partnership Act purports to be drawn on the aggregate theory, its language in places, as in sections 13, 14, 15, 17, and 18, follows the entity theory. Professor Warren says (page 300), "The truth of the matter seems to us to be that the Uniform Partnership Law is based, partly upon the aggregate theory, and partly upon an entity theory,—Dr. Lewis' entity theory. The language of the Act reminds us of the language of some political platforms. There is some language which will please those who approve the aggregate theory. There is other language which will please those who approve the entity theory."

Under the sections dealing with joint-stock companies and business trusts there is also a careful study of the early statutes and decisions that throws much light upon such land-mark cases as *Thomas v. Dakin*, *Wescott v. Fargo*, and *Hibbs v. Brown*. In these close cases he would hold the organizations to be partnerships rather than corporations.

After reviewing the statutes as to methods of suit, the author concludes that they show that the legislatures do intend to keep in their own hands the treatment of an association as a legal unit and not to leave it to the courts to say when such associations shall be treated as units. He gives scant consideration to the suggestion advanced by some authorities that legislatures may give so many of the attributes of a corporation to a group that it may thereby become a corporation even though it be not the legislative intent to make it a corporation. Professor Mechem gave some weight to this suggestion and Chief Justice Taft's opinion in the *Coronado* case seems susceptible of being construed as supporting it, as may be several United States Supreme Court decisions.

At the beginning of his interesting discussion of *de facto* corporations, the writer calls his reader's attention to the fact that "it is futile to talk about the law of '*de facto* corporations' without defining the meaning or meanings in which the expression is used." He deals with the cases on *de facto* corporations as falling into three distinct classes. His treatment of the subject is thorough and throws much light on the cases considered.

Professor Warren's method of using cases to develop his subject reminds one of the late Professor Gray's use of them in his masterly work on the Rule against Perpetuities. That Professor Warren has made a thorough study of the cases is shown by the fact that his index of cases covers fifty pages closely typed. The treatise shows an enormous amount of labor and long and careful consideration of the problems presented.

W. LEWIS ROBERTS

JURISDICTION IN MARGINAL SEAS, WITH SPECIAL REFERENCE TO SMUGGLING. By William E. Masterson. New York: The MacMillan Company, 1929, pp. xxvi, 423.

The extent of interests in and control over marginal seas, has for the last decade, presented questions of increasing importance, and this is true particularly as to the jurisdiction or power to be exercised in relation to clandestine introduction into the several countries of prohibited goods. As to the United States, the smuggling of alcoholic liquors brings forward the

particular problem of the extent and character of our authority over our coastal waters for this one purpose. It has been contended that the question of control over marginal seas should be considered separately with relation to the particular purpose for which the proposed control is to be exercised. Mr. Master-son's book demonstrates this better than anything else in print, and it will be necessary to advance different and more cogent arguments than heretofore presented if his conclusions are to be overturned by those who think that all the problems of marginal seas are to be solved by the primary consideration of sovereignty or dominion over a definitely drawn zone of coastal waters. So this book deals primarily with jurisdiction relative to foreign smuggling craft. It is based largely on original sources and contains much material not heretofore published. The historical background of the subject is covered thoroughly, the first 250 pages setting forth the development of the "English Law," the "Law of the British Empire" and that of the United States. Diplomatic correspondence, treaties and international arbitrations occupy the next 125 pages. After this careful and accurate study the author's conclusions are given in a clear and common sense manner, and "the real basis" for special jurisdiction is well stated in section 78 of the text, wherein is found the following statement: "The facts of life—the needs of nations—must be considered in this connection. The state clearly must exercise jurisdiction in the waters adjacent to its coasts for the purpose of protecting its various interests. . . ."

Consideration is then given to the interests of the states involved and the conclusion is that the interests of the littoral state may well be subserved by the exercise of jurisdiction for a particular purpose without trespassing upon superior interests of others. "It must be borne in mind that these laws have no application to a vessel engaged upon some lawful enterprise; they are leveled at smuggling vessels. . . . They reveal no intention on the part of the legislator to claim for the littoral state, dominion, or a zone of 'sovereignty'. . . ." Throughout the discussion the author's application of the theory of interests clarifies the issues.

The book will prove profitable and interesting not only to diplomats and statesmen but to all that rapidly growing number of people who are interested in international relations.

It is safe to predict that the troublesome questions relating to marginal seas will not be solved until most of the particular problems are treated separately in the manner adopted by Mr. Masterson.

FRANK H. RANDALL

CASES ON THE LAW OF TORTS. By Lyman P. Willson. Chicago; Callaghan & Company, 1928. pp. xxiii, 1088.

The outstanding characteristic of Professor Wilson's new case book on the law of torts is the omission of case footnotes and a substitution therefor of references to leading law journal articles and comments. These references appear at the beginning of respective sections and also at the head of individual cases. It is the hope of the author that this departure from stereotyped footnotes will stimulate an early interest in the law library and will foster the spirit of individual investigation. In addition to this it will be of great value to the teacher who is offering the course in torts for the first time.

The arrangement of contents is also rather novel. The book is divided in five parts and the first deals with "Introductory General Considerations." Here the author treats of "persons responsible for torts," "what is an act" and the distinction between torts, crimes and contracts. This is a departure from the other case books on torts and it seems to the writer to be a justifiable one. The remainder of the work follows the general scheme of Bohlen and Pound's Edition of Ames and Smith; although the topic headings differ as to form of statement.

Professor Wilson has succeeded in collecting a number of recent cases that are interesting and valuable for class room purposes. The book contains about six hundred cases, more than half of which have been decided since 1900. There are approximately one hundred English cases in the volume. A considerable number of cases are in fine print. It is the belief of the writer that the book would be more valuable if a uniform,

readable print had been used throughout. We predict a wide acceptance of this work by teachers in the field of tort law.

FORREST R. BLACK

CASES ON BILLS AND NOTES. By Morton Carlisle Campbell. Cambridge: Published by the Editor, 1928. pp. xvi, 1051.

Casebooks that have been in general use might be said to fall into two groups. One group consists of those that follow the original Harvard plan with cases so selected and arranged as to make the student draw his own conclusions as to which of two or more contrary lines of decisions present the correct rule of law. Cases are selected and presented in such a way that the student is forced to think. As a means of attaining that end erroneous decisions may be of even greater use to the teacher than correct ones. The principal object is to develop legal minds.

A second type is that which seeks to present cases that give the correct rules of law only. This might be termed the textbook type of casebook. Too often it is found that in this type of selected cases decision follows decision that involves the same principle or principles of law. Many cases are accumulative in effect only. The aim of such of a casebook seems to be to crowd the student's mind with legal principles. They are based upon the idea that the student's mind is a store house in which legal rules may be packed away for future use. A text book might just as well be used for it would serve the purpose quite as well, possibly better, for the student in that case would not have to go over so much ground to get the same result. Such a casebook is apt to be used by the instructor as a source book out of which he lectures to his class.

Professor Campbell's casebook on Bills and Notes, like his casebook on Mortgages, seems to be an effort to combine these two earlier types of casebooks. The cases selected seem to be used for the purpose of presenting the law and the problems which follow the cases seem designed to provoke thought and discussion on the part of students. These problems supply the instructor with hypothetical cases for class-room use. They cannot take the place of those he works out for himself. He cannot develop the subject in his own way or in as systematic

a manner by using the problems prepared by another as he can by hypothetical cases prepared by himself. The result is somehow bound to be more or less fragmentary. It is also more difficult to arouse interest by the use of such problems. There is lacking the element of surprise which comes when varying sets of facts are presented in the development of the instructor's hypothetical cases. This seems to be an attempt to present the law as one would present a subject in mathematics. Page after page of problems are presented and the student is told to solve them. References are given with the problems so that the student can look up the original cases in the reports and find the solutions to the problems. This was not true of the casebook on Mortgages. The reviewer's experience in class-room use of this earlier casebook on Mortgages convinces him that this newer method of presenting a subject is not an improvement upon the original Harvard casebook idea.

There is much, however, to commend this casebook. There is an excellent selection of cases. Few or none of the really important decisions on the subject of bills and notes have been omitted. The passages of the Negotiable Instruments Law that are pertinent to the topic under consideration are printed in heavy type at the beginning of the sections. Numerous footnotes introduce additional material. A complete list of law review articles is presented in the front part of the book.

W. LEWIS ROBERTS

BENDER'S FEDERAL FORMS. By Charles L. Sylvester. Albany: Matthew Bender & Company, Inc., 1929. pp. xxxvxi, 2093.

These two volumes, embracing as they do a large number of forms relative to the conduct and organization of the courts, as well as the usual work of counsel, will prove valuable to officials, judges and attorneys. A form book need not be slavishly followed, but if intelligently used is a time and money saver. The use of these volumes, we believe, will bear out the hope of the compiler that they will furnish a workable set of forms to be used as a "companion" to the texts on Federal

Practice and the new 1928 United States Code to which latter work references are found after each of the forms.

The whole work contains 1205 forms. It is difficult to indicate their scope in a brief review, but a perusal of the table of contents will show that it is broad enough to cover most matters with which the practitioner or court official will be confronted. Captions, orders, affidavits, pleadings both civil and criminal, decrees, notices, certificates, writs, subpoenas and many other subjects are covered. Appeals, the Volstead Law, Bankruptcy and Admiralty are given sufficient attention.

The compiler has had experience in Federal Practice and it is not surprising that the selection and arrangement of the forms are judicious. In any book of forms a good index is indispensable—even more so than in a treatise. The index herein is well arranged and the type of the text is clear and the work as a whole attractive. The practitioner and teacher will, we believe, find it a valuable addition to the library.

FRANK H. RANDALL

THE LEGAL EFFECTS OF RECOGNITION IN INTERNATIONAL LAW. By John G. Hervey. Univ. of Pennsylvania Press, 1928, pp. xiv, 170.

Dr. Hervey has produced a valuable treatise on the legal effects of recognition in international law as interpreted by the courts of the United States. This problem has assumed a new importance since the World War with the creation of new states and the continued non-recognition of Soviet Russia by the United States. The author is not concerned with the recognition policy of any country but only with the legal aspects of recognition as they effect individual rights. The second chapter dealing with "Preliminary Considerations" is as clear and concise a statement of general principles governing the subject as will be found anywhere in legal literature. Subsequent chapters deal in an illuminating way with the juristic status of unrecognized governments, the retroactive effect of recognition and the extraterritorial operation of acts of recognized and unrecognized governments, and the value of the work is increased by a list of cases and a short bibliography. Dr. Hervey has made a real con-

tribution in a field of international law that has been neglected by research scholars.

FORREST R. BLACK.

APPELLATE PRACTICE AND PROCEDURE IN THE SUPREME COURT OF THE UNITED STATES. By Reynolds Robertson. New York: Prentice-Hall, Inc. 1928, pp. xxxix, 360.

The author by reason of his experience as Assistant Clerk of the U. S. Supreme Court has had an opportunity which he has embraced. He has written a well ordered guide for the lawyer seeking review by the Supreme Court. The work is one of the few texts and the only late one confined to practice in the Supreme Court. The value of the book is enhanced by the very fact that questions of jurisdiction and appellate practice in general are excluded. The practitioner, though not familiar with the field of Supreme Court practice, may find here in small compass those matters in which he is interested in securing a review of the case he has lost below. The recent changes in the Federal practice are covered, the act of 1928 abolishing the writ of error to federal courts being discussed in Appendix D.

The lawyer often finds himself wanting only in procedural "mechanics". In other words he has his case in hand so far as are concerned the substantive law and questions of jurisdiction, but is not familiar with the procedural steps and the customary forms. This work will supply that need and will prove a valuable handbook. He will find here a full explanation of the new rules of the Supreme Court with forms for all papers to be filed, a discussion of the new practice on appeal, accurate citations to cases and statutes and many other matters of practical import. No lawyer with business in the Supreme Court can afford to be without this excellent manual.

FRANK H. RANDALL

JUDICIAL INTERPRETATION OF INTERNATIONAL LAW IN THE UNITED STATES. By Charles Pergler. New York: The Macmillan Company, 1928, pp. vii, 222.

This treatise on international law is written wholly from the standpoint of American judicial interpretation. The British and Continental cases are not considered and for the most part

only decisions of the Supreme Court of the United States are employed. There are a few decisions of state courts of last resort, as well as of the lower federal courts dealing with points that have not been passed on by the Supreme Court of the United States. Furthermore the work deals only with the law of peace. The laws of war and neutrality are not considered because of the author's belief that the laws of war should not be treated as a branch of international law.

Starting with this limited thesis the author in reality has presented a digest of cases. In its very nature the discussion in places is rather sketchy. Each topic is dealt with in a separate section. Although rather difficult to read because of the lack of a common thread running through it, we found it very valuable as a source book. Each page is heavily documented and there is an excellent table of cases. It should be of great value to the student or teacher who wants to find quickly and easily an elementary discussion of the more important points of international law. Obviously a work of less than two hundred pages cannot treat exhaustively the contents of some four hundred cases cited therein. However, considering the author's purpose we can recommend the book very highly as a valuable text for teachers and students of international law.

FORREST R. BLACK

1929 CUMULATIVE SUPPLEMENT TO COLLIER ON BANKRUPTCY, THIRTEENTH EDITION. By Ralph E. Rogers. Albany: Matthew Bender & Company, Incorporated. 1929, pp. 728.

The 1929 Cumulative Supplement to Collier on Bankruptcy gives all the important developments in the law of bankruptcy of the past few years, including the new rules formulated by the United States Supreme Court to meet recent legislative changes, a discussion of the abolition of the writs of error in the federal courts, and the order adopted by the Supreme Court to prevent baseless appeals. The Supplement also contains sections and subsections amended by the Bankruptcy Act of 1926. Additional forms for Equity Receivership are included in Part II.

The Supplement is so arranged that one can tell at a glance what changes have been made in the various sections of this four volume work of Collier on Bankruptcy by looking at the page

reference in the supplement. All the recent decisions are cited or abstracted under these page references. An index, however, of these cases has been unfortunately omitted.

This cumulative supplement brings the four volume edition of Collier on Bankruptcy down to date and is indispensable to every practicing lawyer.

W. LEWIS ROBERTS

